

**AGENDA**  
**URBAN COUNTY PLANNING COMMISSION**  
**ZONING ITEMS PUBLIC HEARING**

**January 30, 2014**

- I. **CALL TO ORDER** – The meeting was called to order at 1:30 p.m. in the Council Chamber, 2<sup>nd</sup> Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Eunice Beatty (arrived at 2:09 p.m.); Will Berkley; Carla Blanton; Patrick Brewer; David Drake; Karen Mundy; Mike Owens, Chair; Carolyn Plumlee; and Bill Wilson. Absent were Mike Cravens and Frank Penn.

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Traci Wade; Tom Martin; Dave Jarman; and Stephanie Cunningham. Other staff members present were Tracy Jones, Department of Law; Bettie Kerr and Randy Shipp, Division of Historic Preservation; Tim Queary, Urban Forester; Hillard Newman, Division of Engineering; Casey Kaucher, Division of Traffic Engineering; and Greg Lengal, Division of Fire and Emergency Services.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Wilson, seconded by Ms. Plumlee, and carried 8-0 (Beatty, Cravens, and Penn absent) to approve the minutes of the December 12, 2013; December 19, 2013; and January 16, 2014, meetings.

III. **POSTPONEMENTS AND WITHDRAWALS**

1. DP 2014-1: LOCUST HILL SHOPPING CENTER (PARCEL 1, LOT 1, BLOCK A) (AMD) (2/23/14)\* - located at 3101 Richmond Road. (Council District 7) **(The Roberts Group)**

Note: The Planning Commission postponed this plan at their January 16, 2014, meeting. The purpose of this amendment is to increase buildable area for a new restaurant location and revise the outlot at 3035 Richmond Road.

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
7. Division of Waste Management's approval of refuse collection locations.
8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. Resolve removal of trees along south edge of retention area and resulting impact on canopy coverage.
10. Discuss vehicular circulation, including entry/exit from the proposed outlot developments.

Petitioner Representation: Bob Cornett, The Roberts Group, stated that the petitioner had resolved the issues that were raised at the Commission's January 16<sup>th</sup> meeting, but not until just prior to this meeting. He requested a two-week postponement in order to allow the staff time to prepare a presentation based on the petitioner's revised plan submission.

Action: A motion was made by Mr. Brewer, seconded by Ms. Blanton, and carried 8-0 (Beatty, Cravens and Penn absent) to postpone DP 2014-1 to the February 13, 2014, Planning Commission meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, January 9, 2014, at 8:30 a.m. The meeting was attended by Commission members: Eunice Beatty, Will Berkley and Mike Owens. Committee members in attendance were: Hillard Newman, Division of Engineering; and Casey Kaucher, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Galt, Dave Jarman, Kelly Hunter, Denise Bullock, Jimmy Emmons, Scott Thompson and Cindy Deitz, as well as Lieutenant Greg Lengal, Division of Fire & Emergency Services and Tracy Jones, Department of Law. The Committee made recommendations on plans as noted.

General Notes

*The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.*

1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.
2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.

A. **DEVELOPMENT PLANS**

1. DP 2014-2: FRITZ FARM, LLC (SUMMIT LEXINGTON BAYER PROPERTY) (2/23/14)\* - located at 4100 Nicholasville Road. (Council District 4) **(HDR)**

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\* - Denotes date by which Commission must either approve or disapprove request.

Note: The Planning Commission postponed this plan at their January 16, 2014, meeting.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Correct note #7.
11. Delete note #11.
12. Provided the Planning Commission grants a waiver to Art. 6-8(q)(2) of the Land Subdivision Regulations.
13. Graphically depict compliance with Art. 28-6(c)(1) and (2) of the Zoning Ordinance.
14. Remove MU-3 zoning "requirements" for parking.
15. Denote bicycle parking per Art. 28-6(f) of the Zoning Ordinance.
16. Clarify pedestrian system connection from Tangleway and Tavistock Drive.
17. Denote compliance with lighting per Art. 28-6(g) of the Zoning Ordinance.
18. Denote KTC approval of access and traffic signal.
19. Denote conditional zoning restrictions.
20. Denote adjoining property information.
21. Addition of private street/access easement maintenance responsibilities.
22. Document compliance with the tree canopy requirements.
23. Identify number of mixed-income housing units on plan.
24. Discuss building orientation and parking lot orientation to arterial streets.
25. Discuss road improvements proposed.
26. Discuss timing of residential development.
27. Discuss vehicular use area in relation to residential zone and buffer areas.
28. Discuss residential building "FF" in relation to residential zone.
29. Discuss landscaping to be provided along arterials and tree preservation areas adjacent to residential zones.
30. Discuss building "CC" (retail use) conflict with 100' utility easement.
31. Discuss "construction entrance" proposed at Tavistock Drive.
32. Discuss timing of development under the Capacity Assurance Program limitations.

Staff Presentation: Mr. Martin presented the revised submission of the final development plan for the Summit Lexington Bayer Property, which is located at the intersection of Man O' War Boulevard and Nicholasville Road. Mr. Martin said that Tangleway stubs into the property from the southeast. The developer is proposing to construct a new signalized intersection on Nicholasville Road, as well as two access points on Tiverton Way.

Mr. Martin stated that the proposed development is a Mixed-Use Project, with over 500,000 square feet of retail space proposed, as well as a slightly smaller amount of residential space. The residential uses are proposed on the second floor of some of the retail spaces, and some freestanding residential buildings are proposed as well. The minimum parking requirement for the proposed development is 2,383 spaces; the developer is proposing 2,565 spaces, some of which will be located in two parking structures. Mr. Martin stated that the total square footage proposed for the development is over one million square feet, with retail, residential, professional office, and motel uses. He added that the plan indicates a total of 306 residential units, with 490 bedrooms.

Mr. Martin said that the applicant is proposing a landscape buffer along the shared boundary with the existing residential neighborhood, with a stormwater detention basin in the same general area. He noted that there is an ongoing LFUCG stormwater improvement project in the neighborhood adjacent to the subject property, with which the developer is cooperating. The detention basin will be constructed in accordance with the requirements of that project.

With regard to the proposed access to the property, Mr. Martin stated that a new right-in/right-out access is proposed to Man O' War Boulevard, with additional access points on Nicholasville Road (full intersection) and Tiverton Way.

Mr. Martin said that this rendering is a revised version of the plan, which satisfied some of the earlier conditions listed for approval. The staff is now recommending approval of this plan, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.

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4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
- ~~10. Correct note #7.~~
- ~~11. Delete note #11.~~
- 10.12. Provided the Planning Commission grants a waiver to Art. 6-8(q)(2) of the Land Subdivision Regulations.
- ~~11.13. Graphically depict compliance with Art. 28-6(c)(1) and & (2) of the Zoning Ordinance.~~
- ~~14. Remove MU-3 zoning "requirements" for parking.~~
- 12.15. Denote bicycle parking per Art. 28-6(f) of the Zoning Ordinance.
- ~~16. Clarify pedestrian system connection from Tangley Way and Tavistock Drive.~~
- 13.17. Denote compliance with lighting per Art. 28-6(g) of the Zoning Ordinance.
- ~~18. Denote KTC approval of access and traffic signal.~~
- ~~19. Denote conditional zoning restrictions.~~
- ~~20. Denote adjoining property information.~~
- 14.21. Addition of private street/access easement maintenance responsibilities Denote applicant's financial participation in off-site traffic calming to the approval of Traffic Engineering.
- 15.22. Document compliance with the tree canopy requirements.
- ~~23. Identify number of mixed income housing units on plan.~~
- 16.24. Discuss building orientation and parking lot orientation to arterial streets Denote use of architectural detail for building façades facing arterial streets.
- ~~25. Discuss road improvements proposed.~~
- ~~26. Discuss timing of residential development.~~
- 17.27. Discuss Relocate vehicular use areas a minimum of 50' from in relation to residential properties on Walhampton Drive and Tangley Way zone and buffer areas.
- 18.28. Discuss Relocate residential building "FF" a minimum of 70' from nearest in relation to residential zone.
- 19.29. Discuss landscaping to be provided along arterials and Create tree preservation areas outside of stormwater detention areas adjacent to residential zones.
- ~~30. Discuss building "CC" (retail use) conflict with 100' utility easement.~~
- ~~31. Discuss "construction entrance" proposed at Tavistock Drive.~~
- ~~32. Discuss timing of development under the Capacity Assurance Program limitations.~~

With regard to the revised conditions, Mr. Martin stated that #9 had been satisfied, since the staff had received documentation from the Division of Water Quality certifying that the proposed development meets the requirements of the Capacity Assurance Program. He said that it is the staff's understanding that the developer has received approval to construct Phase I of the development, and they are on a waiting list for sanitary sewer capacity for Phase II. Referring to the rendered development plan, Mr. Martin indicated the area proposed for construction in each phase.

Mr. Martin said that several of the conditions address the requirements of Article 28-6 of the Zoning Ordinance, which regulates the design components applicable to all mixed-use zones. The applicant has addressed those requirements successfully, but the staff has requested that those conditions remain on the plan in order to ensure that the requirements are consistently depicted on the plan. With regard to condition #13, Mr. Martin explained that the MU-3 zone is the only zone in the Ordinance that specifies a required height for street light fixtures, so the staff recommended that the developer document compliance with that requirement on the plan.

Mr. Martin stated, with regard to condition #14, that there was a great deal of discussion at the public hearing for the zone change on the subject property about the impact of the additional traffic from the proposed development on the adjoining neighborhoods. He said that the Division of Traffic Engineering staff has been working with the neighborhood, and the applicant has agreed to participate financially in a traffic calming project. The staff does not believe that it should be the applicant's responsibility to determine the best means of traffic calming, but they would like for that cooperation to be noted on the development plan.

With regard to condition #16, Mr. Martin stated that the applicant had submitted renderings of the proposed architectural drawings. The staff is concerned about the details of the buildings that face Man O' War Boulevard and Nicholasville Road, so that they do not look like the sides and rears of some typical commercial buildings.

Mr. Martin said that conditions #17-19 are all related to the required open space on the subject property. He said that the plan currently depicts several areas of open space near the existing residential neighborhood. Mr. Martin displayed a copy of the preliminary development plan that was approved by the Commission at the time of the zone change on the subject property, noting the areas of proposed open space. He said that portions of the open space now being proposed are simi-

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lar to the original plan; but some are significantly restricted, and the staff is concerned about that reduction. The staff also believes that it is important to preserve the Tree Protection Areas and existing mature tree canopy as buffers for the residential area. The staff understands that work on the proposed detention basin could compromise some of the trees, but the staff would like for them to be maintained as much as possible. Mr. Martin said that several of the proposed buildings are depicted as being much closer to the existing residential areas on this version of the plan, which is also of concern to staff. The staff is recommending condition #17 to require the relocation of the proposed vehicular use area for building "BB" to be at least 70' from the residences on Walhampton Drive and Tangleway Way.

Waiver Report Presentation: Mr. Martin presented the staff's report on the requested waiver to allow a modified design for the proposed right-in/right-out access to Man O' War Boulevard. The access is proposed to be located approximately 945' from the Habersham Drive intersection, and 940' from the Man O' War Boulevard/Nicholasville Road intersection, both of which are signalized. There is an existing median that runs the length of the distance between the two intersections. Mr. Martin stated that the staff and the Division of Traffic Engineering have reviewed the waiver request, and are comfortable with the spacing of the proposed right-in/right-out access on Man O' War Boulevard, but they are not comfortable with the design proposed by the applicant. The Division of Traffic Engineering staff designed a compromise access point and provided drawings to the applicant, in order to preserve pedestrian safety. Mr. Martin displayed a rendering of a typical right-in/right-out access, noting that the staff's concern with the proposed right-in/right-out is the safety of pedestrians walking along Man O' War Boulevard. He said that the staff is recommending approval of the requested waiver, subject to the condition that the applicant modify the proposed design according to the Division of Traffic Engineering's design.

Commission Questions: Mr. Owens asked if the applicant's waiver request recognized the proposed compromise with the Division of Traffic Engineering. Mr. Martin answered that the staff is recommending that the applicant modify the design to the approval of Traffic Engineering, which should allow for the compromise.

Note: Ms. Beatty arrived at this time.

Representation: Nick Nicholson, attorney, was present representing the petitioner. He stated that the petitioner is in agreement with the staff's recommendations, with the exception of the proposed compromise for the Man O' War Boulevard right-in/right-out access. The applicant contends that their design for that access is safer than a traditional right-in/right-out. They have discussed the Division of Traffic Engineering's proposed compromise, and they believe that their proposal is safer than that design as well. Mr. Nicholson said that that access point is critical to the proposed development, as it will reduce commercial traffic on the streets in the adjoining neighborhood and improve the internal circulation on the site.

Mr. Nicholson stated that the applicant believes that their design is safer because it proposes to locate the pedestrian crossing areas at "hard-stop intersections" within the site. Referring to an aerial photograph of the right-in/right-out access point to the Wal-Mart store, located directly across Nicholasville Road from the subject property, he said that that access requires pedestrians to cross an active traffic lane, with no requirement for the cars to stop. The applicant believes that it would be more appropriate to construct full-stop intersections with crosswalks, in order to require cars to stop and allow pedestrians to cross safely. With this revised plan, the applicant is proposing to construct a deceleration lane along Man O' War Boulevard, in order to allow cars to slow down prior to entering the hard-stop pedestrian crossing area. That configuration would help to mitigate traffic on Man O' War Boulevard by allowing cars to stack internally on the site, rather than along the roadway itself. If stacking overflowed the designated area, it would accumulate in the deceleration lane, rather than in the traffic lanes of Man O' War Boulevard. Mr. Nicholson said that the applicant also designed the proposed right-in/right-out to accommodate the large anchor store that they believe will be the primary traffic generator on the site, which is located on the proposed Trifecta Drive. The applicant is requesting that the Planning Commission approve their requested waiver with their proposed right-in/right-out design, rather than the staff's alternative, because they believe that it will be safer and will improve traffic circulation on Man O' War Boulevard and in the proposed commercial development.

Mr. Nicholson stated, with regard to the recommended conditions for approval, that the applicant is agreeable to contributing to traffic calming measures in the adjoining neighborhood. He said that the applicant is concerned, however, that the proposed language is not specific enough. With regard to condition #19, he stated that the applicant's engineer met with the Urban Forester, who determined that the trees located in that area on the property are not significant. The applicant believes that their proposed landscaping plan would provide a more appropriate buffer for the nearby residences than the existing treeline. The applicant is proposing to provide landscaping well above the requirements of Article 18 of the Zoning Ordinance, which requires one tree every 40 feet, along with a fence or hedge. The applicant is proposing to construct a fence, as well as a double row of conifer trees spaced 20 feet apart. The tree species proposed would be 10'-12' tall when installed, with a full mature height of 60'-70' and width of 20'-40'. Mr. Nicholson said that the applicant is therefore requesting to be allowed to follow their landscaping plan, rather than the landscaping as proposed under condition #19.

Mr. Nicholson said that his exhibit booklet, which was distributed to the Commission members prior to the start of the meeting, contains documents noting that the Kentucky Department of Transportation has provided the applicant conditional approval of their proposed signalized intersection on Nicholasville Road. Also included in the exhibits is the applicant's certification of sufficient capacity for Phase I under the Capacity Assurance Program.

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Commission Question: Ms. Plumlee asked if the alternative landscape plan refers entirely to the property boundary along Walhampton Drive, or if landscaping is also proposed along Tangley Way. Mr. Nicholson stated that that plan refers only to the area along Walhampton Drive. He said that the boundary along Tangley Way has a natural slope, so the applicant is not proposing to construct a fence there. Rather, they are proposing to plant a 6' hedge wall with a tree every 40 feet.

Citizen Support: There were no citizens present in support of this development plan.

Citizen Opposition: Hank Graddy, attorney, stated that he had appeared at the Commission's January 16<sup>th</sup> meeting, along with Mr. Nicholson, to request a two-week postponement of this item, in order to provide the applicant time to meet with the neighborhood residents. He said that a neighborhood meeting has not yet been held. A meeting has been scheduled for February 11<sup>th</sup>, at which time the neighborhoods hoped to discuss the proposed landscaping plan and other buffering issues, as well as concerns about traffic, stormwater and sanitary sewers. Mr. Graddy stated that he was aware that opponents in these matters typically cannot request postponement, but he requested that the Planning Commission keep this item open in order to allow the applicant to meet with the neighbors on February 11<sup>th</sup>. The objectors are hopeful that they can use that meeting to discuss several of the issues Mr. Nicholson raised in his presentation, including traffic calming. Mr. Graddy said that the "first meeting" to which Mr. Nicholson referred (prior to the zone change hearing) was the only meeting that has taken place between the applicant and the neighbors.

Mr. Graddy said, referring to his exhibit booklet that was distributed to the Commission members, that he represents neighborhood residents James Remus, Ed Prentice, Kathy Estep, and Dawn Gonzalez. He stated that he had submitted a petition at the time of the rezoning request for the subject property with the names of 25 residents who are supportive of his clients' position. At the Urban County Council hearing on the rezoning request, additional petitions with 75 names were submitted.

Mr. Graddy stated that, in June of 2013, prior to the Planning Commission public hearing, he received authorization from his clients to draft a settlement proposal to Bruce Simpson and Bill Lear, outlining the changes to the development plan that would be necessary in order to earn his clients' support. He said that his exhibit booklet outlined those changes, as well as the amendments made due to revisions in the plan. The resident objectors support the proposed right-in/right-out access to Man O' War Boulevard, although he would defer comments about the proposed access configuration to those who would be walking the area frequently. The opposition also supports the applicant's decision not to construct a vehicular access to the property off of Tangley Way, as well as the proposed widening of Nicholasville Road in the vicinity of the subject property. The residents have asked the applicant to remove the commercial buildings labeled "W" and "V" as depicted on the plan, which are proposed as part of Phase II of the development, in order to develop that portion of the property in a way that is more green and to provide more protection for the residents in the Fox Harbour and Habersham areas.

Mr. Graddy said that his clients are also asking at this time, as they did at the zone change hearing, that the Planning Commission not approve any piece of the proposed development that would eliminate the possibility of construction of the single-point-entry interchange that was recommended by the South Nicholasville Road Small Area Plan for the Nicholasville Road/Man O' War Boulevard intersection. That proposal to construct an overpass would be expensive, and it is not included in the state's six-year plan; but the nearby residents believe it would provide an optimum solution for the existing traffic issues at that intersection.

Mr. Graddy stated that his clients are also requesting that the residential buildings "DD," "EE," "FF," and "GG" be removed from the development plan. While they understand that the proposed development is intended for mixed use, which has a required residential component, they would ask that all of the residential uses be contained above the proposed retail structures, which would amount to approximately 100 units. The residents are not in support of the proposal to construct several freestanding residential buildings, for a total of approximately 300 residential units. Mr. Graddy said that the residents are concerned about the impact of the additional traffic from those residential units on the morning and evening peak-hour traffic to their neighborhood. He said that commercial, retail, and office uses would not impact that traffic, but the additional residential uses would "take an existing unacceptable situation, and make it more unsafe and unworkable." If those freestanding residential buildings cannot be removed, Mr. Graddy's clients would ask that they be made part of Phase II of the development, so that the proposed Summit commercial development can go forward as proposed. The residents also believe that removing a portion of the residential units could eliminate the need for an additional signalized intersection on Nicholasville Road. Mr. Graddy said that his clients are also concerned about the proposed access to Tiverton Way, and they would request that the Planning Commission disapprove this plan in order to require the applicant to rework the intersection of Tiverton Way and Nicholasville Road.

Mr. Graddy said that his clients had not received any type of written response from the applicant's attorneys, although he had one brief discussion with them about his clients' concerns. He urged the Planning Commission to delay action on this request, and to encourage the applicant to work with the nearby residents to address some of their concerns.

With regard to the applicant's proposal to construct the proposed development in phases, Mr. Graddy stated that it appeared to be necessary in order for the proposed development to meet the requirements of the Capacity Assurance Program (CAP). He said that the applicant's exhibits contained a one-page summary of the CAP bank for the subject property,

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from the LFUCG website, which described a temporary reservation request that was listed as “approved, offsetting credits assigned.” The next page of that summary indicates that there is an existing deficit in available capacity for the West Hickman Wastewater Treatment Plant, because of projects that were grandfathered. When the proposed development was originally submitted for CAP approval, the applicant indicated a need for 125,000 gallons of capacity, which was determined not to be available, so Phase I was wait-listed. Mr. Graddy said that, in December of 2013, the applicant modified their plan, reducing their capacity request to 121,000 gallons, with the requirement that the developer invest in downstream capacity acquisition to account for those 125,000 gallons. His clients would like to discuss that requirement with the applicant, because they are concerned about the negative 400,000 gallons of capacity that would appear to be created following the construction of the proposed development. In addition, Mr. Graddy’s clients are requesting that the Planning Commission consider approving only Phase I of the proposed development at this time, and not approve Phase II, since the applicant has acknowledged that sufficient capacity does not exist for that portion of the development.

Mr. Graddy referred the Commission members to his exhibit booklet, noting that an exhibit is included that compares the magnitude of the proposed development with the existing Fayette Mall, which is located near the subject property on Nicholasville Road. He said that Fayette Mall is developed at 14 square feet per acre; the current plan for the subject property proposes a development that is significantly more intense, which “takes a problem and makes it dramatically worse.” Mr. Graddy asked the Planning Commission to require the applicant to scale back the proposed development by either making it smaller, or phasing it so that the retail portion can move forward, while the residential component is postponed until the existing traffic, stormwater, and sanitary sewer issues are resolved. He also requested that the Commission require the applicant’s traffic engineer to respond to the concerns that his clients’ traffic engineer raised at the 2013 zoning public hearing for the subject property. In conclusion, Mr. Graddy requested that the Planning Commission delay any type of action on the proposed development plan until after the February 11<sup>th</sup> meeting between the applicant and the neighborhood residents.

Commission Questions: Mr. Owens stated that the neighborhood meeting was discussed at the Subdivision Committee meeting three weeks ago, and asked why that meeting had not yet taken place. Mr. Graddy answered that he did not receive agreement from the applicant that a meeting would take place until several days after the January 9<sup>th</sup> Subdivision Committee meeting, where the issue was discussed. He then discussed potential meeting places with Mr. Nicholson, with the goal of meeting at the Pax Christi Church. When Mr. Graddy contacted the church to request the use of their meeting space, he was informed that the earliest available meeting date was February 11<sup>th</sup>. He approached his clients about seeking an alternate meeting space, but they were not able to agree on any other potential locations. In addition, his clients indicated that they needed to have sufficient lead time prior to the meeting in order to contact the neighborhood residents. Mr. Graddy added that the process was also slowed down by recent inclement weather.

Ms. Blanton asked why only two meeting location options were explored. Mr. Graddy responded that his clients preferred to hold the meeting in a large meeting room that was within walking or short driving distance of the property owners on Tiverton Way, Walhampton Drive, and Fox Harbour Drive. He said that there are two churches in the area, one of which is under construction and unavailable for meetings. He added that he discussed with his clients the possibility of meeting at one of the restaurants nearby on Nicholasville Road, but his clients feared that the meeting would be poorly attended if it was not located very close to the neighborhood. Mr. Graddy said that his clients preferred to hold the meeting at Pax Christi Church, which was unavailable until February 11<sup>th</sup>.

Citizen Opposition (cont.): Dawn Gonzalez, 3817 Walhampton Drive, stated that she has been concerned about the proposed development since its inception, because of the possibility of negative traffic and stormwater impacts on her property and those of her neighbors. She said that she believes that, if a major traffic incident occurs on Nicholasville Road, her neighborhood could be used as a cut-through, which could result in cars “speeding through where children are playing.”

Ms. Gonzalez said that she was originally from Los Angeles, and she was familiar with the traffic around three major shopping malls in the San Fernando Valley. Ms. Gonzalez believes that the current traffic around Fayette Mall is comparable to that of the Los Angeles malls during the Christmas shopping season. She said that she and most of her neighbors have become accustomed to driving the back roads through the adjoining neighborhoods, rather than using Nicholasville Road to travel to other locations within Lexington. She believes that the proposed development will create so much additional traffic that the back roads will become congested, as well, and there will be no good options for driving out of her neighborhood. Ms. Gonzalez stated that, by her estimation, the proposed development will be 33% more dense than Fayette Mall, based on the acreage of the property. She believes that the additional residential units in the area will create an impossible traffic situation for all of the residents.

With regard to stormwater runoff, Ms. Gonzalez said that there are existing flooding problems in the area. She is concerned that creating additional impervious surface on the subject property will exacerbate those problems, and she does not believe that the proposed detention basin will help the situation.

Ms. Gonzalez stated that she would prefer for the developer to significantly decrease the number of residential units proposed on the subject property, which should help to mitigate the additional traffic to the site.

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Commission Question: Mr. Drake stated that it was obvious that density was one of the major concerns with the proposed development. He asked if the applicant had done any type of economic analysis of the impact of reducing the density; and, specifically, whether the revenue requirements needed to meet return thresholds would price the remainder of the development out of the market, if the residential density was reduced. The applicant indicated a desire to respond during rebuttal.

Citizen Opposition (cont.): Edward Prentice, 396 Fox Harbour Drive, requested that the Planning Commission postpone consideration of this development plan until after the February 11<sup>th</sup> meeting between the neighbors and the applicant. He said that, at that meeting, he expects the applicant to answer questions with regard to the construction of additional northbound traffic lanes on Nicholasville Road; the intent to signalize the intersection of Toronto Drive and Nicholasville Road; the expected peak-hour increase in the amount of traffic at the Man O' War Boulevard/Nicholasville Road intersection; the total number of access points to Tiverton Way, with an explanation of how they will function; the total amount of traffic from the proposed development onto Tiverton Way; how many traffic signals will be installed between Tangley Way and Man O' War Boulevard; a complete and approved sanitary sewer plan for the property; how many houses in the neighborhood will be purchased and destroyed; and the amount of stormwater runoff expected on Fox Harbour Drive. Mr. Prentice stated that the Planning Commission should be familiar with every aspect of the proposed development prior to voting to approve this plan, in order for the process to be fair and balanced between the applicant and the neighborhood residents.

Mr. Prentice asked that the Planning Commission not let the small number of neighbors present sway their decision on this plan, because "you don't need a large turnout to be made fools of." He added that he believed that it would be premature to vote on this plan before all of the legal issues with the property are settled, which would give the appearance that the Planning Commission is "taking sides" with the applicant.

Petitioner Rebuttal: Bruce Simpson, attorney, was also present representing the applicant. He said, with regard to Mr. Graddy's comments about why the neighborhood meeting had not yet taken place, that he typically seeks to meet with residents in advance of hearings, in order to narrow the issues of dispute. After discussing the need to meet at the Subdivision Committee meeting on January 9<sup>th</sup>, Mr. Simpson contacted Mr. Graddy the next day, offering for the applicant to meet with the neighbors the following week. Mr. Graddy indicated that that would not allow enough time for the residents to be notified. On Monday, January 13<sup>th</sup>, Mr. Simpson contacted Mr. Graddy and indicated that the applicant would request postponement of this plan at the Commission's January 16<sup>th</sup> meeting, in order to allow time to meet with the residents. He requested that that meeting take place as early as possible the following week. Mr. Graddy did not respond to that contact, so Mr. Simpson contacted him again on January 22<sup>nd</sup>. Mr. Simpson stated that Mr. Graddy also did not respond to that attempt to contact him. Three days prior to this meeting, Mr. Simpson contacted Mr. Graddy again via email and indicated his frustration and disappointment at the lack of communication and inability to set up a time for the neighborhood meeting. Two hours prior to this meeting, Mr. Simpson received an email from Mr. Graddy, asking that the applicant agree to postpone this request until after the February 11<sup>th</sup> meeting. Mr. Simpson entered into the record of the meeting copies of all the emails in question.

Mr. Simpson stated that this meeting was the third time Mr. Graddy had tendered the same 20-page letter as an exhibit. He said that his testimony at this meeting would have been more appropriate for a zone change, which was already approved for this property by both the Planning Commission and the Urban County Council. Mr. Simpson explained that the standard for the Commission's approval of a development plan is whether the plan is in conformity with the published Zoning Ordinance and Subdivision Regulations, in order to be approved. The density and zoning of the property have already been decided, and the staff is recommending approval of this plan, indicating that they believe that it conforms to all of the applicable regulations.

Mr. Simpson said that Mr. Graddy and his clients are requesting, rather than a development that follows the recommendations of the South Nicholasville Road Small Area Plan, "two urban forests, no commercial, and some professional offices." He stated that the rezoning request for the subject property was approved, because it was in compliance with the recommendations of that Small Area Plan and the 2007 Comprehensive Plan. Mr. Graddy challenged that rezoning in court, and the Fayette Circuit Court dismissed his complaint on the basis that it did not comply with the law, and the Court did not have jurisdiction to hear it. That case has been sent to the Court of Appeals. Mr. Simpson opined that, if the Planning Commission recommends approval of this development plan, Mr. Graddy will likely file suit over that decision as well.

With regard to the issue of compliance with the Capacity Assurance Program, Mr. Simpson stated that the applicant has been assured that they have the approval of the Division of Engineering for their sewer capacity for Phase I of the proposed development. He said that, even though that capacity has been approved, the applicant will still be required to get a permit for it prior to any construction on the property.

Mr. Simpson said that the applicant contends that their proposed right-in/right-out design is safer and more appropriate than the traditional configuration. He added that he believed that the opposition has failed to address the issues that the Commission is required to consider, and he requested approval.

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David Silverstein, Bayer Properties, stated that the applicant has been working on this project for three years. He said that the subject property has a history of political conflicts and development issues, so it was difficult to develop. The applicant considered the adopted Small Area Plan for the subject property, and the proposed development is much less dense than what could have been proposed under that Plan. Mr. Silverstein stated that to say that the proposed development be as dense as Fayette Mall "would be a misconception."

Mr. Silverstein said, with regard to Mr. Drake's question, that Mr. Graddy's suggestion to eliminate nine commercial buildings and all of the proposed freestanding residential structures is not an acceptable or reasonable proposition, after three years of work on the proposed development and the many public forums at which it has been discussed. He stated that he has worked with the staff and the neighborhood to develop a plan that will help to mitigate the existing stormwater runoff issues in the area, and will help LFUCG comply with the EPA Consent Decree.

Mr. Silverstein stated that the subject property is "the last party to the dance," and offsite infrastructure has not kept pace with development in the general vicinity. He said that he had spent countless hours on the proposed development with the intent of designing a project that the city can be proud of, and that complements the adjoining residential neighborhood.

Opposition Rebuttal: Mr. Graddy said that, when Mr. Simpson emailed him on January 27<sup>th</sup>, he responded immediately, noting that a neighborhood meeting had been scheduled for February 11<sup>th</sup>. He indicated in that email that he had not responded to Mr. Simpson's earlier attempts to contact him because he was attempting to reschedule the meeting at that time.

Mr. Graddy stated that it was unfair for Mr. Silverstein to say that his clients were requesting the removal of nine commercial buildings. He said that his clients were requesting the removal of two commercial buildings, as well as the freestanding residential buildings (four buildings).

Staff Rebuttal: Mr. Martin stated that the staff had no rebuttal comments at this time.

Commission Questions: Ms. Blanton asked Mr. Martin to address the issue of tree preservation for the subject property, and the reasons for the staff's opinion that the proposed right-in/right-out access to Man O' War Boulevard would be less safe than the design preferred by Traffic Engineering. Mr. Martin responded that the applicant's proposed tree preservation plan does not include the preservation of the existing canopy, which the staff believes is important to be of immediate benefit in screening the adjoining residential area. With regard to the right-in/right-out, he said that it is the staff's understanding that the Division of Traffic Engineering is concerned about pedestrian traffic on Man O' War Boulevard and the importance of good design for that access, since it will be the first such access granted on Man O' War Boulevard. The Traffic Engineering staff is concerned that problems with the access might be discovered after construction, and that it could set a precedent for other similar requests.

Mr. Brewer stated that he would like to hear the Division of Traffic Engineering staff's explanation for their stance on the right-in/right-out access. Casey Kaucher, Division of Traffic Engineering, stated that their concern with the proposed right-in/right-out "slip ramp" design is that it expects pedestrians to come into the subject site, and back out onto Man O' War Boulevard, which they believe is unrealistic. She said that she believes that a traditional right-in/right-out configuration would be more appropriate, since it would require pedestrians to cross only one lane of traffic, which will be turning right, and therefore going slower, at that point. It would also maintain a straight sidewalk on Man O' War Boulevard, rather than making a jog into the proposed development. Mr. Brewer opined that a stop sign and a direct path seemed to be much safer than a single lane of traffic moving through with no stop. Ms. Kaucher answered that she did not believe that pedestrians along Man O' War Boulevard would follow that route, since it is proposed to take a jog into the proposed development. Rather, she believes that pedestrians will cross on the slip ramp, where the vehicles are still traveling at a high rate of speed. Ms. Kaucher said that, when pedestrians cross at a traditional right-in/right-out access, the cars traveling through the access are making hard right turns and, as such, are either moving very slowly, or nearly stopped.

Mr. Drake asked if it would help to use a fence or barrier to guide pedestrians around the sidewalk. Ms. Kaucher answered that, if the Planning Commission does choose to approve the proposed right-in/right-out configuration, the Division of Traffic Engineering would recommend the installation of some type of barrier to keep pedestrians from going straight rather than using the sidewalk. She reiterated that they believe that the traditional right-in/right-out design would be safer and more appropriate.

Mr. Owens asked if the CAP documentation indicates that capacity is sufficient for Phase I of the proposed development, and that Phase II will not be constructed until sufficient capacity exists. Mr. Martin answered affirmatively.

Ms. Plumlee stated that the area around the subject property has a history of flooding, and asked if it would be appropriate, since the proposed development is part of a Tax Increment Financing (TIF) project, to obtain a security bond of some sort to require the applicant to complete the stormwater detention facilities as proposed. Mr. Martin responded that there are certain things that can be worked out between LFUCG and the developer under the TIF agreement, but strict bonding is a function of a subdivision plan. He explained that, when a property is subdivided and infrastructure is constructed, the developer is allowed by the Subdivision Regulations to post bonds or sureties. He added that, under a Final Development

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Plan, the infrastructure must be constructed from the plan as depicted and in its totality. Ms. Plumlee asked if the Commission should consider the issues under which the stormwater detention could be addressed as part of the TIF agreement. Mr. Martin answered that the proposed development is going forward, and the staff is aware of the need for stormwater detention and is comfortable with the applicant's ability to manage it.

Mr. Berkley asked Mr. Martin to note the phasing of the proposed development. Mr. Martin referred to the rendered development plan, noting the portion of the plan that is proposed for Phase I, and the portion that will be delayed until Phase II. Mr. Berkley asked if all of Phase II would be commercial. Mr. Martin responded that Phase II includes commercial buildings and the proposed hotel. Mr. Berkley asked if any other phasing options had been considered. Mr. Nicholson answered that the proposed phasing was the only option that had been considered at this point. He added that the staff required the applicant to ensure that the residential component was included as part of Phase I. Mr. Nicholson stated that the entire Phase I portion needed to be developed at the same time, but the Phase II area could be developed separately. Mr. Berkley asked if it would be feasible to delay the residential development as Mr. Graddy's clients requested. Mr. Nicholson answered that the applicant does not believe that it would be feasible to delay the residential development. He explained that, in order to include residential development above a portion of the commercial buildings and have the development be economically feasible at that point, the residential uses must be constructed at the same time.

Ms. Mundy said that it appeared that the phase split line was located in the center of the detention basin, and she wanted to ensure that it would be completed upfront, as controlling stormwater runoff is a major issue in the development of the subject property. Ben Edelen, engineer, answered that the phasing line is for actual buildings only; all of the infrastructure will be constructed at the same time.

Mr. Nicholson said, with regard to Ms. Kaucher's comments about the proposed right-in/right-out design, that the applicant would recommend the construction of some type of fence or hedge to direct the pedestrians along the sidewalk. He reiterated that the applicant believes that their proposed design will be safer, since pedestrians would be crossing at hard stops rather than active lanes of traffic.

Discussion: Mr. Owens stated that the hearing was closed at this time, and opened the floor for Commission comments or a motion.

Ms. Plumlee stated, with regard to the questions about capacity assurance, that the staff has received confirmation of sufficient capacity for Phase I of the proposed development, and that they are aware that LFUCG "will have the wrath of the EPA" if it is not sufficient. She said that she saw no reason for Phase I of the development to not move forward at this time.

Mr. Brewer said that he was unclear on several of the conditions, and he would like for someone to summarize the issues with regard to the staff's recommendations and the applicant's agreement with them. Mr. Nicholson replied that the applicant is in agreement with all of the staff's conditions. He said, with regard to condition #19, that the applicant does not believe that a tree preservation area is necessary, but they will agree to denote it on the plan if the staff so desires. With regard to #14, he said that the applicant would like for the word "reasonable" to be added, in order to ensure that the applicant does not unwittingly get caught up in a large, expensive project. Mr. Nicholson concluded by noting that, with those two exceptions, the applicant is in agreement with all of the other conditions for approval. Mr. Martin said, with regard to condition #14, that the applicant will be required to put money into a dedicated fund, and the Division of Traffic Engineering will work with the neighborhood to determine the appropriate traffic calming measures. Mr. Brewer asked where the staff stood on the recommendation for the right-in/right-out access. Mr. Martin answered that the staff is recommending, as part of the approval of the waiver, that the applicant work with the Division of Traffic Engineering on an acceptable design. Mr. Saltee added that, if the Commission is desirous of a redesign of the right-in/right-out on Man O' War Boulevard, they could consider adopting the one staff condition as listed on the waiver report. If the Commission is satisfied with the applicant's design, they could delete that condition to the approval of the waiver. Mr. Brewer stated that the Division of Traffic Engineering had indicated that they were not in agreement with the applicant's proposed design, and he did not believe that that issue was resolved. He said that he thought it needed to be resolved prior to making a motion on this item.

Mr. Owens asked if Mr. Brewer had an opinion on the design of the right-in/right-out access. Mr. Brewer answered that the applicant's proposed design appeared to him to be safer. Ms. Blanton agreed with Mr. Brewer's opinion, adding that the proposed design, along with a fence or barrier to direct pedestrians, should address the issue. Mr. Drake agreed with Ms. Blanton and Mr. Brewer.

Mr. Wilson prefaced his motion by noting that, any time members of the community attend a meeting and make their opinions heard, it gets his attention. He said that all of his questions had been answered, but he still had some concerns about how traffic would be addressed in and around the proposed development. He opined, however, that the proposed development is one of the best Infill & Redevelopment projects that he has seen.

Development Plan Action: A motion was made by Mr. Wilson, seconded by Ms. Mundy, and carried 9-0 (Beatty abstained; Cravens and Penn absent) to approve DP 2014-2, subject to the 19 revised conditions as listed, adding the word "reason-

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able” to #14 to read: “Denote applicants’ financial participation in reasonable off-site traffic calming to the approval of Traffic Engineering.”

Chairman Comment: Mr. Owens stated that the Planning Commission had considered the subject property several times, with many different development plans being filed over the years. He opined that it has gotten better, and that the applicant has worked hard to get to this point.

Waiver Request Action: A motion was made by Mr. Wilson, seconded by Ms. Plumlee, and carried 9-0 (Beatty abstained; Cravens and Penn absent) to approve the requested waiver, deleting condition “A” from the staff recommendation.

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, January 9, 2014, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Patrick Brewer, Mike Cravens, David Drake, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONING MAP AMENDMENTS**

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

~~The procedure for these hearings is as follows:~~

- Staff Reports (30 minute maximum)
- Petitioner’s report(s) (30 minute maximum)
- Citizen Comments
  - (a) proponents (10 minute maximum OR 3 minutes each)
  - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
  - (a) petitioner’s comments (5 minute maximum)
  - (b) citizen objectors (5 minute maximum)
  - (c) staff comments (5 minute maximum)
  - (d) Hearing closed and Commission votes on zone change petition and related plan(s)

- B. **FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS** – Following abbreviated hearings, the remaining petitions will be considered.

~~The procedure for these hearings is as follows:~~

- Staff Reports (30 minute maximum)
- Petitioner’s report(s) (30 minute maximum)
- Citizen Comments
  - (a) proponents (10 minute maximum OR 3 minutes each)
  - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
  - (a) petitioner’s comments (5 minute maximum)
  - (b) citizen objectors (5 minute maximum)
  - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

**Note:** Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. **URBAN COUNTY PLANNING COMMISSION ZONING MAP AMENDMENT**

- a. **MAR 2014-2: URBAN COUNTY PLANNING COMMISSION** - petition for a zone map amendment to a Historic District (H-1) overlay zone for 0.40 ± net (0.532 ± gross) acre, for properties located at 149 and 151 Jefferson Street; 611, 638-640 and 644 Ballard Street; and 609 West Short Street (rear portion).

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reasons:

1. The expansion to the Western Suburb Historic District Overlay (H-1) zone area is consistent with the following Themes, Goals and Objectives of the 2013 Comprehensive Plan, as well as the text of the 2007 Comprehensive Plan as it relates to Historic Preservation:
  - a. Growing a successful community through well-designed neighborhoods, by encouraging existing neighborhoods to flourish through the use of neighborhood character preservation (Theme A.3.a).

- b. Improving a desirable community through protection and enhancement of the cultural landscapes that give our community its unique identity and image. This can be accomplished through protection of historic resources (obj. a); encouraging renovation, restoration and maintenance of historic structures (obj. b); and developing incentives to retain, restore, preserve, and continue use of historic sites and structures (Theme D.3.a-c).
- 2. Historic District Overlay (H-1) zoning for this area would be consistent with the recommendation of the Board of Architectural Review for expansion of the Western Suburb Historic District (H-1) Overlay, with the recommendations found in the *Expansion of Western Suburb Historic District (H-1) Designation Report*, and with the provisions of Article 13-3(g) of the Zoning Ordinance. Specifically, the following findings are applicable to the subject area:
  - a. The structures evaluated in the study area were constructed over a 100-year period, but are representative of the different time periods in which they were built. They reflect the architectural styling popular at the time they were constructed and add to the understanding of how the Western Suburb developed between the early 19th century and mid 20th century.
  - b. The shallow front setbacks, scale and visual presence of each of the dwellings is an integral part of the overall streetscape. The varied architectural styles fit seamlessly within the character of the Western Suburb Historic District.
  - c. The study area has a similar rhythm of lot sizes, building setbacks, and streetscapes with structures ranging from sizable to quite modest. The footprint of the neighborhood is fairly compact and includes more handsome, brick structures along its primary streets and smaller, vernacular, often frame houses interspersed on its side streets and alleys. The properties and structures in this expansion area retain their integrity and will add to and complement the history and architecture of the existing Western Suburb Historic District.
  - d. The study area meets four of the nine criteria necessary in order to establish Local Historic (H-1) Overlay zoning, as listed in Article 13-3(g) of the Zoning Ordinance. According to the Designation Report, the criteria met are:
    - i. Criteria 13-3(g)(5): It has value as a building that is recognized for the quality of its architecture and that retains significant elements showing its architectural significance.
    - ii. Criteria 13-3(g)(6): It has distinguishing characteristics of an architectural style valuable for the study of a period, method of construction or use of indigenous materials.
    - iii. Criteria 13-3(g)(7): It has character as a geographically definable area possessing a significant concentration of buildings or structures united by past events or by its plan or physical development.
    - iv. Criteria 13-3(g)(8): It has character as an established and geographically definable residential neighborhood, agricultural area or business district united by culture, architectural style or physical plan and development.

**Staff Presentation:** Ms. Wade presented the staff report on this request, explaining that it was initiated by the Commission at the request of William Johnston, who owns several properties in the area. The proposed zone change would add a Historic District overlay to six parcels, consisting of approximately .4 acre of land adjacent to the existing Western Suburb Historic District.

Ms. Wade said that the existing zoning of the subject parcels is a mixture of B-1 and R-4. It is surrounded on the southeast by mostly B-1 zoning, along Jefferson Street; and by R-4 zoning to the southwest, along West Short Street. She displayed a graphic depicting the existing Western Suburb Historic District, as well as the six parcels proposed for addition to that district.

Ms. Wade stated that the subject properties were requested to be added to the Historic District by Bill Johnston, a current resident and active member of the neighborhood. He is an owner of four of the parcels included in this request; two other parcels were added in order to maintain adjacency to the existing H-1 area boundary. Ms. Wade noted that this request is the first time an addition to a local historic district has been proposed in Lexington-Fayette County.

Ms. Wade said that, after a request such as this is initiated by the Planning Commission or the Urban County Council, the Planning staff forwards it to the Division of Historic Preservation. They prepare a study of all the properties proposed to be included in the historic district, and a designation report. The designation report for this request includes the history of the Western Suburb Historic District; a list of notable citizens connected with the area, including Mary Todd Lincoln; a review of the architectural styles in the area; and a description of the building construction of each of the structures. The designation report also notes that the rear of 609 West Short Street was not included in the original request, but is included at this time in order to provide adjacency for the requested properties.

Ms. Wade displayed the following photographs of the subject properties: 1) a small yellow cottage at the corner of Jefferson Street; 2) a larger, Federal-style building adjacent to it; 3) a small cottage on Ballard Street to the rear of the Jefferson Street properties; 4) a duplex at 638-640 Ballard Street; 5) a single-family residence at 644 Ballard Street; and 6) the rear of the property at 609 West Short Street.

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Ms. Wade stated that the Board of Architectural Review (BOAR) held a public hearing on this request in mid-November, where they voted to recommend that the subject properties to be added the existing Western Suburb Historic District. The findings on which they based that recommendation address the Comprehensive Plan and its recommendations for preservation, as well as Article 13-3(g) of the Zoning Ordinance, which identifies the nine criteria for historic districts. In this case, the BOAR and the Historic Preservation staff found that this request met four of the nine criteria. Ms. Wade said that the Zoning Committee reviewed this request, at which time they were in agreement with the staff recommendation of approval, for the reasons as listed in the staff report and on the agenda.

Historic Preservation Presentation: Randy Shipp, Division of Historic Preservation, began his presentation by submitting the designation report, BOAR Design Guidelines, and Article 13 of the Zoning Ordinance into the record of the meeting. Displaying a rendered map, he noted the location of the existing Western Suburb Historic District, and the six properties proposed for addition to the district. He displayed several photographs of structures in the existing Historic District, which includes several commercial properties.

Referring to the six properties proposed for addition to the Historic District, Mr. Shipp stated that 611 Ballard Street is a one-story cottage that was built around 1890. Also on Ballard Street, 638-640 is a one-story duplex constructed around 1940, while 644 Ballard Street is a one-story shotgun cottage constructed around 1930. On Jefferson Street, 149 is a one-story, brick shotgun cottage, which was constructed around 1880. Mr. Shipp noted that that structure does have additions at the rear, but they are in keeping with the character of the original house. He said that 151-153 Jefferson Street is a two-story, Federal-style brick house, which was originally a single-family residence but has now been converted to two-family, and was built around 1818. With regard to the rear portion of 609 West Short Street, Mr. Shipp said that, when the Western Suburb Historic District was first designated as a historic district in 1975, the parcel was separate and was not considered for designation. It was consolidated into 609 West Short Street in 2000, which created a single, legal property that was partly within the Historic District, and partly outside of it. Adding this parcel to the historic district as part of this request will not only provide adjacency for the other requested properties, but will also make that parcel more uniform.

Mr. Shipp stated that the BOAR discussed this request at their meeting in November, and voted unanimously to recommend approval.

Citizen Comments: Bill Johnston, 645 West Short Street, stated that he had, at one time or another, owned all of the properties that are part of this request, with the exception of the rear of 609 West Short Street. He said that he still has an interest in several of the properties as well. Mr. Johnston explained that he "had nurtured these properties for 25 years," and he wanted to ensure that they would continue to be protected after he is no longer able to do so.

Zoning Action: A motion was made by Ms. Blanton, seconded by Mr. Brewer, and carried 8-0 (Beatty, Cravens, and Penn absent) to approve MAR 2014-2, for the reasons provided by staff.

Note: Chairman Owens declared a brief recess at 3:37 p.m. The meeting reconvened at 3:45 p.m.

Note: The following item was continued from the December 19, 2013, Planning Commission public hearing.

**2. RK HOLDINGS, LLC, ZONING MAP AMENDMENT & WOODWARD COURT SUBDIVISION PRELIMINARY SUBDIVISION PLAN**

- a. MAR 2013-18: RK HOLDINGS, LLC (2/2/14)\* - petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Planned Neighborhood Residential (R-3) zone, for 9.77 net (10.29 gross) acres; and from a Single Family Residential (R-1B) zone to a Planned Neighborhood Residential (R-3) zone, for 0.0 net (0.26 gross) acre, for property located at 690 Woodward Lane.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 8) recommends a mixture of Low Density (LD) and Medium Density (MD) Residential future land use for the property. The petitioner proposes developing 48 single-family residential units on the subject property, at an average density of 4.9 dwelling units per acre.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reason:

1. The requested Planned Neighborhood Residential (R-3) zone is in agreement with the 2007 Comprehensive Plan for the following reasons:
  - a. The Land Use Element of the Plan recommends Medium Density Residential (MD) future land use, defined as 5-10 dwelling units per net acre, for 6.84 acres of the subject property closest to Woodward Lane (front);

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- and Low Density Residential (LD) future land use, defined as 0–5 dwelling units per net acre, for 2.93 acres of the subject property closest to the adjacent railroad (rear).
- b. The Plan suggests a density range of between 34 and 83 dwelling units, in total, for the subject property.
  - c. The petitioner proposes to construct 48 single-family dwelling units on the site, with a residential density of 4.9 dwelling units per net acre, in agreement with the Plan's recommendation.
2. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restriction is appropriate for the property via conditional zoning:
- a. The property is to be developed with no more than 83 single-family residential units.

This use restriction is necessary and appropriate in order to maintain a character consistent with surrounding residential properties and the 2007 Comprehensive Plan Land Use Element.

- b. PLAN 2013-129P: WOODWARD COURT SUBDIVISION (2/2/14)\* - located at 690 Woodward Lane.  
(Council District 6) **(Vision Engineering)**

The Subdivision Committee Recommended: **Postponement.** There were some questions regarding the access, the street pattern proposed, and potential easement conflicts.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Building Inspection's approval of landscaping.
5. Addressing Office's approval of street names and addresses.
6. Urban Forester's approval of tree protection area(s) and required street tree information.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. Denote acreage in proposed right-of-way.
10. Denote construction access.
11. Clearly delineate all easements.
12. Delete development plan notes from general notes.
13. Revise right-of-way connection to Wilderness Road right-of-way.
14. Discuss easement conflict with proposed right-of-way, detention and lots.
15. Discuss buildable area for Lots 19, 22 and 43.
16. Discuss access and possible connections to Woodward Lane and Wilderness Road.
17. Discuss gas transmission note on final record plat for adjacent property.
18. Discuss landscape buffer requirements per final record plat on adjacent property.

Chairman Comments: Mr. Owens explained that this hearing was continued from the Commission's December 19, 2013, meeting. He said that any further discussion on this request should refer only to the new information that would be provided today.

Staff Presentation: Mr. Sallee stated that the staff would like to update the Commission members on the new information that had been provided since the Commission's December 19<sup>th</sup> meeting. He noted that the Commission members had been provided with copies of the minutes of that meeting, should they need to refer to them.

Mr. Sallee briefly oriented the Commission to the location of the subject property. He said that there were three new pieces of information that the staff believed would be germane to share with the Commission. Firstly, the staff received further information on the status of Woodward Lane after the December 19<sup>th</sup> meeting, wherein a great deal of discussion took place as to whether that roadway is public or private. At this time, the staff understands, based on research previously completed by the Department of Law, that the portion of Woodward Lane from Liberty Road to the median is public, and the portion on which the subject property has frontage is private. Mr. Sallee stated that the staff has another communication from the Law Department that indicates that LFUCG was maintaining the median area. He explained that, from Liberty Road to the corner of the subject property, Woodward Lane is very narrow. At that point, the road splits, with a median in the middle.

Mr. Sallee stated that the staff has also learned that the petitioner met with Woodward Lane residents on at least one occasion since the December 19<sup>th</sup> public hearing. As a result of that meeting, the petitioner submitted a revised zoning development plan for the subject property. Mr. Sallee noted that the staff had distributed a revised recommendation on the plan, as well as a corresponding revision to their zoning recommendation, prior to the start of this continued hearing. Referring to a rendered copy of the development plan that was considered by the Commission in De-

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ember, he explained that it proposed 48 lots for the subject property in a two cul-de-sac design. The revised development plan eliminates one street connection and has only one street, with three fewer dwelling units.

Subdivision Plan Presentation: Mr. Martin stated that the key change to the revised development is a connection across the subject property to Checkerberry Drive, which eliminates the proposed access point to Woodward Lane. He said that the staff has been and continues to be concerned about access to the subject property, since its access is limited to a street system that connects to only one point on Liberty Road, which could create difficulties for emergency vehicles attempting to reach the property. The petitioner is now proposing emergency access via Wilderness Road, as well as a gated access to Woodward Lane. The revised plan also includes a turnaround for use by solid waste trucks, which are currently required to back up long distances to reach the properties along Woodward Lane.

Mr. Martin stated that the revised conditions for approval of this plan reveal the staff's concerns about conflicts with the many existing easements on the subject property, some of which are very large. He said that the petitioner will need to construct the infrastructure on the property, then recreate and/or delete easements as necessary on the Final Record Plat for the property. Mr. Martin stated that the staff is recommending approval of this plan, subject to the following conditions:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Building Inspection's approval of landscaping.
5. Addressing Office's approval of street names and addresses.
6. Urban Forester's approval of tree protection area(s) and required street tree information.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. ~~Denote acreage in proposed right-of-way~~ Denote timing of proposed improvements to Woodward Lane, including fence relocation.
- ~~10. Denote construction access.~~
- ~~11. Clearly delineate all easements.~~
- ~~12. Delete development plan notes from general notes.~~
- ~~13. Revise right-of-way connection to Wilderness Road right-of-way.~~
- 10.44. Discuss Denote that existing easement conflicts with proposed right-of-way, detention and lots will be resolved at time of Final Record Plat.
- ~~15. Discuss buildable area for Lots 19, 22 and 43.~~
- ~~16. Discuss access and possible connections to Woodward Lane and Wilderness Road.~~
- ~~17. Discuss gas transmission note on final record plat for adjacent property.~~
- ~~18. Discuss landscape buffer requirements per final record plat on adjacent property.~~

Zoning Presentation: Ms. Wade stated that the changes to the petitioner's development plan necessitated a revision of the staff's findings for this request. She said that the staff is recommending approval, for the following reason:

1. The requested Planned Neighborhood Residential (R-3) zone is in agreement with the 2007 Comprehensive Plan for the following reasons:
  - a. The Land Use Element of the Plan recommends Medium Density Residential (MD) future land use, defined as 5–10 dwelling units per net acre, for 6.84 acres of the subject property closest to Woodward Lane (front); and Low Density Residential (LD) future land use, defined as 0–5 dwelling units per net acre, for 2.93 acres of the subject property closest to the adjacent railroad (rear).
  - b. The Plan suggests a density range of between 34 and 83 dwelling units, in total, for the subject property.
  - c. The petitioner proposes to construct ~~48~~ 45 single-family dwelling units on the site, with a residential density of ~~4.9~~ 4.6 dwelling units per net acre, in agreement with the Plan's recommendation.
2. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restriction is appropriate for the property via conditional zoning:
  - a. The property is to be developed with no more than 83 single-family residential units.

This use restriction is necessary and appropriate in order to maintain a character consistent with surrounding residential properties and the 2007 Comprehensive Plan Land Use Element.

Petitioner Representation: Jihad Hallany, Vision Engineering, stated that the petitioner had met with the Woodward Lane residents, which resulted in the new layout of the proposed development. He noted that the new layout resulted in the loss of three lots, and the addition to the petitioner's responsibilities of constructing 200 more linear feet of roadway.

Mr. Hallany stated that there were some questions raised at the December hearing about the possibility of mercury contamination on the subject property. He said that a study was done in August of 2004 by Applied Geology and Envi-

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ronmental Science, which determined that there were areas of contaminated soil on the property at one time; but that soil had been removed and hauled away to a hazardous waste facility, and replaced with new material. Soil tests of the new soils indicated that any remaining hazardous materials on the site were either below detectable levels, or below Federal regulation guidelines. Mr. Hallany submitted the report from that study into the record of this hearing.

Mr. Hallany said that many of the residents at the December hearing were also concerned about stormwater issues in the vicinity of the subject property. He said that the petitioner has agreed to oversize the two detention basins on the property, which should help to mitigate the existing flooding problems in the area.

Mr. Hallany stated that the petitioner has also agreed to install a landscape buffer and privacy fence along the property boundary. He said that, following that meeting, the petitioner received some support from residents in the area. However, the petitioner understands that there are still some residents who have concerns, particularly about the proposed emergency access to Wilderness Road.

Commission Questions: Mr. Berkley said that he did not have any concerns about the proposed rezoning, but he questioned the workability of the development plan, given the number of easements and utility transmission lines. He asked if those easements are still active, and whether this plan can be implemented. Mr. Hallany answered that the easements are still active. He said that the lotting pattern for the proposed development has been designed so that houses can be constructed on them. Mr. Berkley stated that he was referring to the staff's concerns about the easements encroaching on the proposed detention basin areas. Mr. Hallany responded that the basin can be constructed as proposed, since the largest easement in that area is for overhead electrical transmission.

Mr. Owens asked, with regard to Mr. Hallany's comments about the existing stormwater issues in the vicinity, where that stormwater originates. Mr. Hallany answered that, at this time, the subject property is entirely pervious; all of the stormwater in the area comes from the adjoining subdivision. The petitioner is proposing to construct an oversized basin and "choke it" so that the peak flow is reduced.

Citizen Comments: Jim Eades, Wilderness Road, stated that he was present representing his mother and brother, who own 730 and 733 Woodward Lane. He submitted a letter into the record, noting that his primary concern is the high pressure gas line that traverses the subject property.

Mr. Owens stated that it appeared that all of the issues mentioned in Mr. Eades' letter were discussed at the December hearing. Mr. Eades said that Checkerberry Drive does not appear to be very wide, and he is concerned about the addition of more traffic to the area. He added that he does not believe that Woodward Lane can accommodate the additional traffic from the proposed development. Mr. Owens explained that the revised development plan does not provide access to Woodward Lane, and the emergency access to Wilderness Road will be gated. Mr. Eades asked how that gate would be closed. Mr. Owens responded that he presumed it would be gated, and only accessible to emergency vehicles.

J.W. Bailey, 713 Woodward Lane, stated that most of the Woodward Lane residents had met with the petitioner and were now in agreement with this request, with one exception. They do not believe that any portion of Woodward Lane is public, and they intend to prove that it is private. Mr. Owens said that, to his knowledge, the status of Woodward Lane would not change. Mr. Martin agreed with that assessment.

Commission Comments: Ms. Beatty stated that she appreciated the additional research and work that was done on this request since the December public hearing. She asked for clarification as to which portion of Woodward Lane is public and which is private. Mr. Martin answered that it is the opinion of the Department of Law that the portion of Woodward Lane from Liberty Road to the median is public; they are reasonably confident that the rest of the roadway is private. The Department of Law has indicated that it might require a survey of the area to determine for sure if the roadway is public or private. Their staff does not believe that such a survey is warranted at this time, because the development plan has been revised to remove access to Woodward Lane and its status is no longer germane to the proposed development. Ms. Beatty asked if the petitioner should be required to make improvements to the private portion of Woodward Lane in order to enhance its ease of use by emergency vehicles. Mr. Martin responded that the petitioner has agreed to provide a turnaround in the median for solid waste vehicles, as well as two additional access points that will allow emergency vehicles to access the proposed development. He added that the staff did not consider the need for the petitioner to do additional improvements specifically for emergency access.

Ms. Plumlee asked if construction traffic will access the subject property via Woodward Lane. Mr. Martin answered that the petitioner has indicated the location of a construction access on Woodward Lane, but noted that the Planning Commission has the ability to restrict that. Mr. Hallany stated that the petitioner would be willing to agree to locate the construction entrance on Checkerberry Drive.

Mr. Brewer stated that he would abstain from voting on this request, since he was not present at the December hearing. Mr. Drake noted that he, too, would abstain, since he missed that hearing as well.

Zoning Action: A motion was made by Ms. Blanton, seconded by Mr. Wilson, and carried 9-0 (Brewer and Drake abstained; Cravens and Penn absent) to approve MAR 2013-18, for the reason provided by staff in their revised recommendation.

Development Plan Action: A motion was made by Ms. Blanton, seconded by Mr. Wilson, and carried 9-0 (Brewer and Drake abstained; Cravens and Penn absent) to approve PLAN 2013-129P, subject to the nine revised conditions as listed, adding a new condition #10 to move the construction access point to Checkerberry Drive.

**3. ANDERSON CAMPUS RENTAL PROPERTIES ZONING MAP AMENDMENT & LYNN GROVE ADDITION ZONING DEVELOPMENT PLAN**

- a. MAR 2013-20: ANDERSON CAMPUS RENTAL PROPERTIES (AMD.) (2/2/14)\* - amended petition for a zone map amendment from a Single Family Residential (R-1D) zone to a High Density Apartment (R-4) zone, for 1.168 net (1.488 gross) acres, at 164-200 Simpson Avenue (even only); 1103-1109 Fern Avenue (odd only); and 1106 & 1108 Stillwell Avenue.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 4) recommends Medium Density Residential (MD) future land use for the 17 parcels that comprise the property. The applicant proposes redeveloping the subject property with two apartment buildings for a total of 39 dwelling units, with 51 bedrooms, and associated off-street parking.

The Zoning Committee Recommended: **Approval**, for the reason provided by staff.

The Staff Recommends: **Approval**, for the following reason:

1. The requested High Density Apartment (R-4) zoning for the subject property is not in agreement with the 2007 Comprehensive Plan's recommendation for Medium Density Residential land use, defined as 5–10 dwelling units per net acre. However, two recent zone change requests (in 2012 and 2013) have been granted in the immediate area that have resulted in a major change of a physical and economic nature, altering the basic character of the area. These two zone changes were not anticipated by the 2007 Comprehensive Plan. The rezoning of nearby properties to the R-1T and R-4 zones has increased the permitted density of land use in this area over that recommended by the Plan.
  2. This recommendation is made subject to approval and certification of ZDP 2013-103: Lynn Grove Addition prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. ZDP 2013-103: LYNN GROVE ADDITION (2/2/14)\* - 164-200 Simpson Avenue (even only); 1103-1109 Fern Avenue (odd only); and 1106 & 1108 Stillwell Avenue. **(Barrett Partners)**

The Subdivision Committee Recommended: **Postponement**. There were concerns about the plan meeting the requirements for the requested R-4 zone.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Addition of metes and bounds description.
8. Denote construction access location.
9. Addition of tree inventory.
10. Denote building heights in feet.
11. Denote reciprocal parking and access.
12. Relocate dumpsters closer to main building (on the same lot).
13. Denote adjoining zone information (R-1D).
14. Denote that compliance with Article 15-7(a) requirements shall be demonstrated at the time of the Final Development Plan.
15. Discuss need for storm drainage and detention.
16. Discuss improvements to street frontages.
17. Discuss need for sidewalks from building to Simpson Avenue right-of-way.
18. Discuss landscape buffer adjacent to single family lots.
19. Discuss 5' landscape buffer for Building #2 and possible variance.

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20. Discuss proposed parking in the side yard and possible variance.
21. Discuss useable open space.

Zoning Presentation: Ms. Wade presented the zoning report, briefly orienting the Commission to the location of the subject property. She said that the existing zoning in the area surrounding the property is a mixture of R-1D to the northwest, southwest, and southeast; and R-4 to the northeast. Other zoning in the vicinity includes B-4 toward South Broadway, and B-6P and B-3 toward Virginia Avenue. She said that the subject property is comprised of 16 parcels, noting that the petitioner removed one small parcel from the original request. The petitioner is proposing to develop the site with an apartment building situated close to Simpson Avenue; provide parking to the rear, accessed from Fern Avenue.

Ms. Wade displayed a 2013 aerial photograph of the subject property, noting that, at that time, there were still single family residences located on the subject property; the site has since been cleared. She also noted the location of the nearby University Village apartment development, as well as the existing single family residences on Burley and American Avenues. She displayed the following additional photographs: 1) a view from Stillwell Avenue toward the railroad tracks and University of Kentucky campus; 2) a view from the same vantage point looking down Stillwell Avenue toward Simpson Avenue; 3) a view from the corner of Simpson and Stillwell Avenues, noting the on-street parking that is typical of several of the apartment developments in the area; 4) a view from the intersection of Simpson and Fern Avenues westward; 5) a view up Fern Avenue toward Burley Avenue; 6) a view across the subject property toward Stillwell Avenue, noting the approximately 12-foot grade change on the property.

Ms. Wade said that the 2007 Comprehensive Plan had a Medium Density land use recommendation for the subject properties. She noted that the staff reviewed the 2007 Comprehensive Plan, rather than the 2013 Comprehensive Plan, for this request because it was filed before the 2013 Plan was adopted. The Plan's Medium Density recommendation is for 5 – 10 dwelling units per acre. The petitioner is proposing 40 units for the subject property, with 56 bedrooms, for a density of over 34 dwelling units per acre. Ms. Wade said that the staff, in reviewing this request, considered that there have been two unanticipated zone changes in the area that significantly changed the planned residential density: a townhouse development and rezoning along Burley Avenue; and a subsequent zone change at the corner of Prospect and Simpson Avenues. The staff believes that those zone changes justify this proposed rezoning, since they were unanticipated by the 2007 Plan.

Ms. Wade stated that the staff and the Zoning Committee recommended approval of this request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Martin presented the preliminary development plan associated with this rezoning request, noting that the staff had distributed copies of the revised conditions now proposed for it prior to the start of the hearing.

Referring to a rendered copy of the development plan, Mr. Martin indicated the location of the proposed apartment building, which is depicted as being oriented toward Simpson Avenue with a 20' setback. He said that the cross-sections along each street frontage depict the street widening and improvements that will be completed by the developer. The petitioner is proposing 60 parking spaces, with access from Fern Avenue. This revised plan depicts the proposed dumpster location in a more interior portion of the subject property, instead of the location nearer the single family residences that was indicated on the previous version of the plan. Mr. Martin said that the center portion of the apartment building is proposed to be four stories in height, with three-story sections to either side.

Mr. Martin stated, with regard to the revised conditions for approval, that the staff is requesting that the petitioner denote compliance with the open space requirements on the plan. He noted that this is a preliminary development plan, so the Commission will have the opportunity to review the Final Development Plan at some point in the future, should the rezoning be granted.

Mr. Martin said that the staff is recommending approval of this plan, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. ~~Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.~~
7. ~~Addition of metes and bounds description.~~
8. ~~Denote construction access location.~~
9. ~~Addition of tree inventory.~~
10. ~~Denote building heights in feet.~~

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- ~~11. Denote reciprocal parking and access.~~
- ~~12. Relocate dumpsters closer to main building (on the same lot).~~
- ~~13. Denote adjoining zone information (R-1D).~~
- ~~14. Denote that compliance with Article 15-7(a) requirements shall be demonstrated at the time of the Final Development Plan.~~
- 6.15. Discuss Denote area set aside for need for storm drainage and proposed detention.
- ~~16. Discuss improvements to street frontages.~~
- ~~17. Discuss need for sidewalks from building to Simpson Avenue right-of-way.~~
- ~~18. Discuss landscape buffer adjacent to single family lots.~~
- ~~19. Discuss 5' landscape buffer for Building #2 and possible variance.~~
- ~~20. Discuss proposed parking in the side yard and possible variance.~~
- 7.21. Discuss useable Denote compliance with open space in the side street side yard per the Zoning Ordinance.

Mr. Martin stated that condition #6 had been satisfied, and it could now be deleted.

Commission Questions: Mr. Owens asked if the staff was recommending that the petitioner denote compliance with the open space requirements by delineating that space with a fence or shrubs. Mr. Martin answered that a development is required to delineate private open space, in order for it to be of benefit to the residents.

Ms. Plumlee stated that the area surrounding the subject property appears to be congested, and asked if underground detention would be more appropriate at this location than an above-ground basin. Mr. Martin responded that the detention area depicted on the plan is to be an underground vault.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He said that the proposed development is not typical of the existing new development in this area, most of which consists of either single-family detached units or apartments with four bedrooms and four bathrooms. That is the type of accommodation preferred by undergraduate students at the University of Kentucky, and there are many such developments in the South Broadway/Angliana Avenue/Simpson Avenue area. The petitioner is limiting the proposed development to 40 units, with 56 bedrooms, and 57 parking spaces.

Mr. Murphy said that there has been a great deal of debate about whether the Simpson/Burley/American Avenue area should continue to be developed to appeal to UK students, but the reality is that that type of development is prevalent. He noted that, of the residential lots within the petitioner's required 500' notification area, fewer than 20% are owner-occupied. He surmised that the majority of the non-owner-occupied units currently serve as student housing. The petitioner contends that the units in the proposed development will be more economically sustainable in the long term, because the target residents will be professionals who work at the UK Medical Center, rather than undergraduate students.

Mr. Murphy stated that the last two Comprehensive Plans have advocated greater density, especially near employment centers. He said that the University of Kentucky is likely the largest, densest employment center in Lexington-Fayette County. UK employees who choose to reside in the proposed development would be able to walk to work, and would not need to rely on cars or bicycles to reach their jobs. Mr. Murphy said that, currently, there is great demand for undergraduate housing in the vicinity of the subject property. The petitioner, however, believes that the supply and demand for student housing will reach an equilibrium point at some point in the future, at which point the proposed development will still be economically viable, since it will not cater primarily to students.

With regard to the proposed development plan for the property, Mr. Murphy said that the petitioner is proposing to construct the building close to and oriented toward Simpson Avenue and the nearby Campus Downs and University Village developments, with the parking behind the building, according to defined infill principles. The density proposed is just over 34 units per acre; the University Village density is 42.5 units per acre, and Campus Downs is approximately 43 units per acre. Mr. Murphy explained that, since the subject property is comprised of 16 lots, it could be developed with 16 four-bedroom single family residences, resulting in 64 bedrooms on the property. The proposed development has fewer bedrooms and less density than the petitioner could develop on the property by-right, without a zone change. Mr. Murphy said that the petitioner is proposing to construct just two access points to the neighborhood street system, rather than the 16 accesses that would be allowable if the property was developed with detached residences. The proposed R-4 zone also has a higher parking requirement than the single family or townhouse zones, which should provide more than adequate parking for the proposed development, eliminating some of the off-street parking in the area.

Mr. Murphy stated that there is a significant grade change on the subject property, which causes stormwater runoff to flow toward Simpson Avenue. The petitioner is proposing to construct underground stormwater detention facilities, as well as sidewalk, curb, and gutter improvements.

Mr. Murphy concluded by noting that the proposed development will be centrally managed along with the University Village development, including a review of the property every day. He noted that many of the existing single-family residences in the neighborhood are absentee-owned, making it difficult to resolve any problems that might occur there.

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Citizen Support: There were no citizens present in support of this request.

Citizen Opposition: Ginny Daley, 136 Burley Avenue, displayed an aerial photograph of the subject property and surrounding neighborhood, noting the properties that are owned by the petitioner where demolitions have occurred within the last three years, and where demolitions are likely to occur in the near future. She said that she does not agree with the petitioner's contention that most of those houses were unlivable; most were in livable condition, and many were occupied by renters. Some of those rental properties were overseen by outside landlords, and some were owned by the petitioner. Ms. Daley stated that, because the petitioner typically demolishes the houses prior to filing a rezoning request, the Planning Commission does not see the information on the rezoning application that denotes the number of people who were displaced. She added that many of those tenants who were displaced were low-income.

Ms. Daley displayed a parcel map of the neighborhood, noting the "cascade" of redevelopment that has occurred over the last few years. She said that it began when a property owner other than the petitioner developed townhouses on Burley Avenue near its intersection with South Broadway. The petitioner then used that impending development to leverage a zone change in order to construct townhouses on the other end of Burley Avenue near the railroad tracks. The Planning Commission recommended approval of that request, against the staff's recommendation and the Comprehensive Plan. That rezoning has since been used as a precedent for other rezoning requests. Ms. Daley stated that, since the last rezoning was so controversial, she and her neighbors requested a public hearing before the Urban County Council. The hearing was scheduled, but the developer neglected to post a required sign, and the zone change was approved by rule of law when it was determined that there was no time left to reschedule the hearing. Ms. Daley said that she and her neighbors felt that "their voices and appeal process were stymied in a lynch-pin decision." She stated that, following that rezoning, the Planning Commission and Council approved another zone change for property owned by the petitioner, who has not yet filed a Final Development Plan for the property.

Ms. Daley said that, at the Zoning Committee meeting three weeks ago, a committee member asked why one of the properties had been removed from the rezoning request. She added that Mr. Murphy responded that that property, along with other adjacent properties, was intended to serve as a southern boundary for the proposed development. While that meeting was occurring, the petitioner was sending letters offering to buy properties along Burley Avenue. The area residents believe that they have not been made sufficiently aware of the petitioner's "big picture plan" for their neighborhood. Ms. Daley noted that she would be attending a meeting immediately following this hearing, to learn about another new development proposed in the block adjacent to the subject property.

Ms. Daley asked the Planning Commission to disapprove this request, since the area residents have received no information from the petitioner about the proposed development, or the scope of his interests in the neighborhood. She does not agree with the staff's contention that the previous zone change resulted in a change of a physical, social, or economic nature, since the properties that were rezoned are still vacant. In addition, she believes that the surrounding area lacks sufficient infrastructure to support the proposed development, and that it would be more appropriate for the Commission to consider all of the development in the area holistically, rather than parcel-by-parcel. Ms. Daley said that her neighborhood is in constant chaos, and she and her neighbors "have no guarantee about the future" of their property. She asked that the Commission members consider whether they would want to live in the neighborhood under those circumstances.

Ms. Daley stated that she believes that the proposed development "goes against the very nature and the letter of the law of the Comprehensive Plan." She said that growing successful neighborhoods is Theme 1 of the 2013 Comprehensive Plan, and informs the spirit of the whole document. Ms. Daley believes that the density of the proposed development, along with the other student housing developments in the area, is being squeezed into an area without sufficient infrastructure to support it, and is creating a "student ghetto" in the neighborhood, with "high transiency, trash, illegal parking, and excessive noise." Ms. Daley said that she believes that the proposed density is inappropriate for the neighborhood, and it creates a horrible place to live. In addition, the proposed development does not respect the existing area's context and design. She asked that the Planning Commission intercede in the process, in order to develop a holistic plan for the area, before the value of a longstanding historic neighborhood is completely eroded.

Petitioner Rebuttal: Mr. Murphy stated that he respected Ms. Daley's comments, but noted that, although the petitioner had sent out more than 100 notification letters, there were no other objectors present. With regard to Ms. Daley's remarks about the displacement of existing residents, he said that only one of the 16 parcels requested for rezoning had been occupied by a resident owner, who is now deceased. Many of the structures had existing code violations, and the petitioner did not feel they were safe for occupancy.

With regard to Ms. Daley's comments about the density of the proposed development, Mr. Murphy noted that it is lower than the 16 single family residences that could be developed on the property today without a zone change. He acknowledged that the neighborhood has changed drastically in the last 10 to 15 years, because "UK has moved west." The petitioner contends that the proposed development is just another step in that process, and it will be in character with the other new development in the area.

Mr. Murphy stated that the petitioner's property that was rezoned in 2013 has not yet developed, because it hinges upon

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the pedestrian connection across the railroad. In order to construct that connection, the petitioner has to coordinate with the University of Kentucky, the utility companies, and the railroad, which can be a lengthy process.

Mr. Murphy said that the petitioner believed it would be better to combine the 16 parcels that make up the subject property into a cohesive development, rather than develop them separately, in a piecemeal fashion. He said that piecemeal development often results in a "hodgepodge" of structures. The petitioner contends that the proposed development meets established infill principles, and believes that it will be one of the best developments in the neighborhood.

With regard to the meeting Ms. Daley referenced in her comments about another new development in the area, Mr. Murphy said that the petitioner does not own that property, and is actually as curious about the proposal as the area residents. He stated that that additional new development further illustrates the changing nature of the neighborhood. He reiterated that the petitioner is in agreement with the staff's recommendations, and requested approval.

Staff Rebuttal: Ms. Wade stated, with regard to Mr. Murphy's comments about density, that the staff calculates the density of the property based on the number of dwelling units, rather than the number of bedrooms provided. She said that the number of bedrooms is a factor in terms of parking calculations, but is not a factor in the density. The petitioner is proposing 40 dwelling units, for a density of 34 units per acre. Ms. Wade added that, if the petitioner was proposing a townhouse development with 20 townhouses, regardless of the number of bedrooms, the density would be approximately 16 units per acre.

Citizen Rebuttal: Ms. Daley stated that, before the structures on the subject property were demolished, there were six houses there. She added that the property was subdivided into 16 parcels following the demolition of the six homes.

Commission Discussion: Mr. Owens stated that, while he did agree that the area is in transition, he believes that the area's redevelopment will continue.

Ms. Plumlee stated that she believed that Ms. Daley's presentation was very well done, and she thanked her for her input at this hearing.

Zoning Action: A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 8-1 (Plumlee opposed; Cravens and Penn absent) to approve MAR 2013-20, for the reasons provided by staff.

Development Plan Action: A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 8-1 (Plumlee opposed; Cravens and Penn absent) to approve ZDP 2013-103, subject to the conditions as listed in the revised staff recommendation, deleting condition #6.

## VI. COMMISSION ITEMS

- A. ZONING ORDINANCE TEXT AMENDMENT INITIATION FOR RECREATIONAL USES – Ms. Wade stated that the staff was requesting that the Planning Commission initiate a text amendment that is a result of the work of the Recreation ZOTA Task Force. She noted that the Commission had discussed the proposed text amendment at two of their recent work sessions.

Action: A motion was made by Ms. Plumlee, seconded by Ms. Mundy, and carried 8-1 (Cravens and Penn absent; Drake opposed) to initiate the requested Zoning Ordinance text amendment.

## VII. STAFF ITEMS

## VIII. AUDIENCE ITEMS – No such items were presented.

## IX. MEETING DATES FOR FEBRUARY, 2014

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	February 6, 2014
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	February 6, 2014
<b>Subdivision Items Public Meeting</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	<b>February 13, 2014</b>
Planning Commission Work Session, Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	February 20, 2014
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	February 26, 2014
<b>Zoning Items Public Hearing</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	<b>February 27, 2014</b>

- X. ADJOURNMENT – There being no further business, Chairman Owens declared the meeting adjourned at 5:07 p.m.

Mike Owens, Chair

Carla Blanton, Secretary